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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARIA GURROLA; JOSÉ
GURROLA,

Plaintiffs,

v.

ALLSTATE INSURANCE
COMPANY, a California
corporation; and DOES 1
through 20, inclusive,

Defendants.

Case No. EDCV 08-535-VAP
(JCRx)

**[Motion filed on September
12, 2008]**

**ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANT ALLSTATE INSURANCE
COMPANY**

Defendant's Motion for Summary Judgment came before the Court for hearing on October 6, 2008. After reviewing and considering all papers filed in support of, and in opposition to, the Motion, as well as the arguments advanced by counsel at the hearing, the Court GRANTS Defendant's Motion for Summary Judgment.

I. BACKGROUND

On March 7, 2008, Plaintiff Maria Gurrola filed suit in California Superior Court for the County of Riverside,

1 alleging claims for breach of contract and breach of the
2 implied covenant of good faith and fair dealing against
3 Defendant Allstate Insurance Company ("Defendant"). A
4 fire on January 1, 2006 damaged Plaintiff's property,
5 insured by Defendant; Plaintiff alleges Defendant
6 mishandled her claim for damages caused by the fire.

7
8 Defendant removed the case to this Court and now
9 brings a Motion for Summary Judgment against Maria and
10 José Gurrola ("Plaintiffs")¹ arguing that the suit is
11 time-barred.

12 II. LEGAL STANDARD

13 A motion for summary judgment shall be granted when
14 there is no genuine issue as to any material fact and the
15 moving party is entitled to judgment as a matter of law.
16 Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc.,
17 477 U.S. 242, 247-48 (1986). The moving party must show
18 that "under the governing law, there can be but one
19 reasonable conclusion as to the verdict." Anderson, 477
20 U.S. at 250.

21
22 Generally, the burden is on the moving party to
23 demonstrate that it is entitled to summary judgment.
24

25
26 ¹José Gurrola is deceased and Maria Gurrola has not
27 yet filed a substitution of party on behalf of his
28 estate. The Court therefore refers to José and Maria
Gurrola as "Plaintiffs" and refers to Maria Gurrola alone
by her full name.

1 Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998);
2 Retail Clerks Union Local 648 v. Hub Pharmacy, Inc., 707
3 F.2d 1030, 1033 (9th Cir. 1983). The moving party bears
4 the initial burden of identifying the elements of the
5 claim or defense and evidence that it believes
6 demonstrates the absence of an issue of material fact.
7 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

8
9 Where the non-moving party has the burden at trial,
10 however, the moving party need not produce evidence
11 negating or disproving every essential element of the
12 non-moving party's case. Celotex, 477 U.S. at 325.
13 Instead, the moving party's burden is met by pointing out
14 that there is an absence of evidence supporting the non-
15 moving party's case. Id.

16
17 The burden then shifts to the non-moving party to
18 show that there is a genuine issue of material fact that
19 must be resolved at trial. Fed. R. Civ. P. 56(e);
20 Celotex, 477 U.S. at 324; Anderson, 477 U.S. at 256. The
21 non-moving party must make an affirmative showing on all
22 matters placed in issue by the motion as to which it has
23 the burden of proof at trial. Celotex, 477 U.S. at 322;
24 Anderson, 477 U.S. at 252. See also William W.
25 Schwarzer, A. Wallace Tashima & James M. Wagstaffe,
26 Federal Civil Procedure Before Trial § 14:144.

1 A genuine issue of material fact will exist "if the
 2 evidence is such that a reasonable jury could return a
 3 verdict for the non-moving party." Anderson, 477 U.S. at
 4 248. In ruling on a motion for summary judgment, the
 5 Court construes the evidence in the light most favorable
 6 to the non-moving party. Barlow v. Ground, 943 F.2d
 7 1132, 1135 (9th Cir. 1991); T.W. Electrical Serv. Inc. v.
 8 Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630-31
 9 (9th Cir. 1987).

10 III. DISCUSSION

11 A. Facts

12 The facts below are "admitted to exist without
 13 controversy" for the purposes of this Motion except where
 14 noted. See Local Rule 56-3.²

15 January 2006 Fire and February 2006 Payment

16 Plaintiffs owned a home in Hemet, California built
 17 several decades ago and insured by Defendant Allstate at
 18 the time it suffered damage in a January 1, 2006 fire.
 19 (Def.'s SUF ¶ 1-3.) Plaintiffs' policy did not include
 20 coverage for building code upgrades. (Defendant's Notice
 21 of Lodgment of Evidence ("NOL") Ex. 1.)
 22
 23

24
 25 ²Plaintiffs' Statement of Genuine Issues of Material
 26 Fact ("SGMF") stated that Plaintiffs agreed with most of
 27 the statements in Defendant's Statement of Uncontroverted
 28 Facts ("Def.'s SUF"). Where Plaintiffs disagreed with
 the facts offered by Defendant, they disagreed with the
 interpretation of the quotes presented by Defendant but
 did not dispute their veracity. (SGMF ¶¶ 5-8.)

1 Plaintiffs promptly made a claim to Defendant for
2 benefits under the fire insurance policy it issued to
3 them. By February 15, 2006, Defendant had inspected the
4 property, calculated the actual cash value of the damage,
5 prepared an estimate of the cost of repair, and sent
6 Plaintiffs a summary of the claim prepared by an
7 insurance adjuster as well as a letter explaining the
8 payment and a check for approximately \$37,000. (Def.'s
9 SUF ¶ 4; NOL Exs. 3-5.)³ Maria Gurrola endorsed the
10 check and Bank of America processed it on April 10, 2006.
11 (NOL Exs. 4-6.)
12

13 Plaintiffs retained attorney Sanford Kassel as
14 counsel regarding their claim. Defendant responded to an
15 October 6, 2006 letter from Plaintiffs' counsel on or
16 about October 19, 2006, stating the "structure claim" had
17 been estimated and paid, and it could "assist" Plaintiffs
18 if they were "interested in resolving the claim
19 pertaining to the fire related damages to the building
20 structure." The letter reminded Plaintiffs they had one
21 year from the inception of the damage to bring suit on
22 the policy. (NOL Ex. 7.)

23 ///
24
25

26 ³This value was less than the amount required to
27 rebuild the home because the home was built so long ago
28 that substantial funds would be required to bring it into
compliance with current building codes. The policy did
not afford coverage for those costs.

1 **November 2006 Inspection and December 2006 Payment**

2 In late November 2006, both parties' representatives,
3 as well as a contractor and a structural engineer,
4 inspected the property again. (NOL Ex. 8.) After this
5 inspection, Defendant wrote to Plaintiffs' counsel that
6 Defendant would remit promptly any additional payment due
7 Plaintiffs for an adjustment in the cash value of the
8 claim. (NOL Ex. 8 (letter dated November 30, 2006); SGMF
9 ¶ 12.)

10
11 Shortly thereafter, Defendant contacted Plaintiffs
12 directly in a letter dated December 7, 2006.
13 (Plaintiffs' Notice of Lodgment of Evidence ("Pl.'s NOL")
14 Ex.1.) Defendant informed Plaintiffs that based on the
15 November 2006 inspection, Defendant would pay an
16 additional \$1,828.45 pursuant to a "settlement agreement
17 related to supplemental repairs" (Id.)⁴

18
19 Seven days later, in a letter to Plaintiffs dated
20 December 14, 2006, Defendant enclosed a check for
21 \$1,828.45 as "settlement of the supplement[al] [sic]
22 estimate" that had taken place in conjunction with the
23 November 2006 inspection. (NOL Ex. 9.) Defendant

24
25 ⁴The December 7, 2006 letter also informed Plaintiffs
26 that they could "make a claim for the recoverable
27 depreciation for an amount in excess of actual cash
28 value" by "repair[ing], rebuild[ing] or replac[ing] the
damaged property within one year of the actual cash value
payment." (Id.) No work has been done. (Declaration of
Patricia Bobbs ("Bobbs Decl.") ¶ 16.)

1 stated: "This payment concludes our claim handling based
2 upon the scope related to the fire damage to your home .
3 . . bottom line is that Allstate has paid what we believe
4 to be the actual cash value of the repairs necessary as a
5 result of this fire." (NOL Ex. 9.)

6
7 **December 2006 and February 2007 Checks**

8 Defendant has produced copies of two checks, each for
9 \$1,828.45, the amount mentioned in the December 7, 2006
10 and December 14, 2006 letters as the settlement entered
11 into pursuant to the November 2006 inspection. (See
12 Pl.'s NOL Ex. 1; NOL Exs. 9, 10; Supplemental Declaration
13 of Patricia Bobbs ("Bobbs Supp'l Decl.") Ex. 16.) The
14 first is dated December 14, 2006 and the second is dated
15 February 7, 2007. Both checks bear the same amount,
16 claim number, and policy number and both state that they
17 are "Payment for DWELLING Coverage for FIRE Loss of
18 01/01/2006." (See NOL Ex. 10; Bobbs Supp'l Decl. Ex.
19 16.)

20
21 According to Defendant, the first check was issued in
22 December 2006 and addressed to "Maria Gurrola, Jose
23 Gurrola." (Bobbs Supp'l Decl. Ex. 16.) Plaintiffs'
24 public insurance adjustor requested that Defendant cancel
25 the December 2006 check and re-issue it in the name of
26 Maria Gurrola and her public insurance adjustor, because

1 José Gurrola had died.⁵ (Reply 2 n.3.) Defendant
2 acceded to this request, cancelled the check and, on
3 February 7, 2007, re-issued a check for \$1,828.45 to
4 "Maria Gurrola and and [sic] Cross Check." (NOL Ex. 10;
5 Bobbs Supp'l Decl. Ex. 16.) Bank of America processed
6 the February 2007 check on February 28, 2007. (NOL Ex.
7 10.) Plaintiff has not produced evidence conflicting
8 with Defendant's account of these events.

9
10 **Acknowledgment of the One-Year Period**

11 Meanwhile, sometime in the fall or winter of 2006,
12 Plaintiffs terminated Sanford Kassel's representation of
13 them in their dealings with Defendant. By December 14,
14 2006, Defendant had received written confirmation that
15 Mr. Kassel no longer represented Plaintiffs. (See NOL
16 Ex. 9.)

17
18 On December 15, 2006, Maria Gurrola signed an
19 "Acknowledgment of Receipt of File/Documents" from
20 Sanford Kassel. She "acknowledge[d] that [she] was
21 previously informed of [her] one (1) year statute of
22 limitations to file a Complaint in this matter" and that
23 she was "fully aware of [her] one (1) year statute of
24 limitations." (Def.'s SUF ¶ 7, NOL Ex. 11; see
25 Declaration of Maria Gurrola ("Gurrola Decl.") ¶ 2.)

26
27 ⁵After Plaintiffs terminated Sanford Kassel's
28 representation of them, Plaintiffs retained a public
insurance adjustor.

1 **January 2007 Request for Reconsideration and April 2007**
2 **Letter**

3 In response to a January 5, 2007 inquiry, Defendant
4 sent Plaintiffs' public insurance adjustor a letter dated
5 April 17, 2007. Defendant dismissed the legal arguments
6 raised in the January letter as irrelevant and stated
7 that "the one-year policy statute of limitations
8 commenced to run . . . October 19, 2006 . . ." (Def.'s
9 SUF ¶ 8, NOL Ex. 12.) The letter indicated that a copy
10 was sent to Maria Gurrola.

11
12 In a letter dated June 8, 2007 to Plaintiffs' public
13 insurance adjustor, Defendant again reminded Plaintiffs
14 that the "one-year policy statute of limitations
15 commenced . . . October 19, 2006" and that Plaintiffs
16 "ha[d] until October 19, 2007 to file any legal action
17 against [Defendant]." (Def.'s SUF ¶ 9; NOL Ex. 13.)
18 This letter also indicated that a copy was sent to Maria
19 Gurrola.

20
21 Defendant informed Plaintiffs of the October 19, 2007
22 deadline a fourth time in a letter dated October 10, 2007
23 addressed to Robert Silverberg, Plaintiffs' counsel in
24 this lawsuit. The letter stated: "Ms. Gurrola has until
25 October 19, 2007 to commence any legal action against
26 [Defendant]." (Def's SUF ¶ 10; NOL Ex. 14.)

1 **March 2008 Filing of this Action**

2 Plaintiffs filed suit on March 7, 2008. (Def.'s SUF
3 ¶ 11.) Defendant filed a Motion for Summary Judgment
4 ("Mot.") on September 12, 2008. Plaintiffs filed their
5 Memorandum of Points and Authorities in Opposition
6 ("Opp'n") on September 22, 2008. Defendant filed its
7 Reply ("Reply") on September 26, 2008.

8
9 **B. Tolling of the One-Year Period**

10 The fire insurance policy on which Plaintiffs base
11 their suit is governed by California Insurance Code
12 sections 2070 and 2071. These statutes mandate uniform
13 language for fire insurance policies and require filing
14 of any suit on a policy within twelve months, or one
15 year, of the inception of the loss. Cal. Ins. Code §§
16 2070, 2071. California insurers have a duty to inform
17 insureds about this one-year period if the insurer denies
18 a claim; if the insurer settles the claim it bears no
19 such burden. See Marselis v. Allstate Ins. Co., 121 Cal.
20 App. 4th 122, 126 (2004).

21
22 The California Supreme Court has found that the one-
23 year period is equitably tolled while the insurer
24 processes the claim. Prudential-LMI Comm. Ins. v.
25 Superior Court, 51 Cal. 3d 674, 693 (1990). The year
26 during which a plaintiff must file suit begins when the
27 insurer settles the claim or denies it in writing. Id.

1 (one-year period commences when insurer denies coverage);
2 Marselis, 121 Cal. App. 4th at 124 (one-year period
3 begins to run when claim is settled). An insurer's
4 statement that no further benefits will be paid has been
5 construed as a denial and also will begin the one-year
6 period. Migliore v. Mid-Century Ins. Co., 97 Cal. App.
7 4th 592, 605 (2002).

8
9 After the claim has been investigated and denied, no
10 tolling of the one-year period occurs based on an
11 insured's requests for reconsideration of an insurer's
12 failure to pay. Singh v. Allstate Ins. Co., 63 Cal. App.
13 4th 135, 142 (1998).

14
15 Here, a fire damaged Plaintiffs' house on January 1,
16 2006 and they filed suit on March 7, 2008. Hence, this
17 motion presents a single issue: whether or not the one-
18 year period provided by statute had expired before
19 Plaintiffs filed suit. In other words, the Court must
20 determine when the equitable tolling in effect during the
21 insurer's investigation ended.

22
23 In order for Plaintiffs' complaint to have been filed
24 timely, the tolling period must have been in effect until
25 sometime on or after March 7, 2007. Defendant contends
26 that the tolling period ended in October or, at the
27 latest, December, of 2006, when its investigation ended,

28

1 it paid a settlement amount, and it denied further
2 payment on the claim. Plaintiffs contend that
3 Defendant's February 2007 check and the language of its
4 December 2006 letter continued to toll the commencement
5 of the one-year period.

6
7 The Court considers first when the one-year
8 limitations period began. Under Prudential and its
9 progeny, the one-year period for filing the complaint was
10 tolled while the insurer processed the claim and began
11 when the claim was settled or denied. See Prudential-
12 LMI, 51 Cal. 3d at 693; Marselis, 121 Cal. App. 4th at
13 124; Migliore, 97 Cal. App. 4th at 605.

14
15 **1. October 2006**

16 The parties offer differing interpretations of the
17 letter Defendant sent to Plaintiffs' counsel in October
18 2006. (See NOL Ex. 7.) Defendant relies on the portion
19 of that document which states "[t]he structure claim has
20 been estimated and the actual cash value has been paid,"
21 to argue that the October 2006 letter signaled that
22 Defendant had finished processing the claim, and
23 therefore the one-year period began on that date. (See
24 Mot. 4; Reply 1.)

25
26 This argument is flawed, however. As Plaintiffs
27 note, the October 2006 letter indicated in the same
28

1 paragraph that some aspects of the claim pertaining to
2 the fire-related damages to the building structure had
3 not been resolved. Furthermore, the October 2006 letter
4 suggests-- but does not state unequivocally-- that
5 further payment is forthcoming. See Singh, 63 Cal. App.
6 at 142. Accordingly, the Court finds that the October
7 2006 letter did not end the tolling of the one-year
8 period. See Migliore, 97 Cal. App. 4th at 605.

9
10 **2. December 2006**

11 Defendant argues in the alternative that tolling of
12 the one-year period ended in December 2006, when
13 Defendant wrote to Plaintiffs that it had "conclude[d]"
14 its processing of their claim and that the "bottom line
15 [wa]s that Allstate has paid what we believe to be the
16 actual cash value of the repairs necessary as a result of
17 the fire." (Mot. 4; NOL Ex. 9.) With this letter
18 Defendant enclosed a settlement check for \$1,828.45 made
19 payable to Maria and José Gurrola. (See NOL Ex. 9; Bobbs
20 Supp'l Decl. Ex. 16.)

21
22 The December 2006 letter ended tolling of the one-
23 year period. It clearly stated that "no further benefits
24 w[ould] be provided beyond those previously paid," as
25 required by Migliore. See 97 Cal. App. 4th at 605
26 (tolling of the one-year period ended when insurer denied
27 plaintiff's claim by refusing to make further payments).

1 Here Defendant wrote: the "bottom line is that Allstate
2 has paid what we believe to be the actual cash value of
3 the repairs necessary as a result of the fire." As
4 Defendant denied the claim in December 2006, any suit
5 filed after December 2007 was untimely.

6
7 Plaintiffs cite Spray, Gould & Bowers v. Associated
8 International Insurance Company, 71 Cal. App. 4th 1260
9 (1999) to argue that Defendant had a duty to warn them of
10 the one-year period and should be estopped from asserting
11 the statute of limitations because it failed to notify
12 them of it in the December 2006 letter. (Opp'n 6.)⁶

13
14 Plaintiffs are correct that the December 2006 letter
15 did not mention the one-year statute of limitations.
16 (NOL Ex. 9.) Nevertheless, their argument fails. The
17 insurer in Spray had a duty to inform the insured about
18 the one-year period but remained silent. See Spray, 71
19 Cal. App. at 1264-65. Assuming that the insurer here
20 denied the claim rather than settling it, as discussed

21
22
23 ⁶ The duty to warn of the one-year period comes into
24 play if the claim is denied. Under Migliore, Defendant's
statement that it would not make further payments was a
denial and triggered that duty. 97 Cal. App. 4th at 603.

25 Defendant's 2006 payment and letter could, however,
26 also be construed as a "settlement" because the letter
27 refers to the enclosed payment as a "settlement" check.
If Defendant settled the claim in December 2006, it ended
28 tolling of the one-year period and did not require
Defendant to inform Plaintiffs of the one-year period.
See Marselis, 121 Cal. App. at 126.

1 *supra* at note 6, the insurer here informed Plaintiffs or
2 Plaintiffs' representatives about the one-year provision
3 four times between October 2006 and October 2007. (NOL
4 Ex. 7 (October 2006 letter); NOL Ex. 12 (April 2007
5 letter); NOL Ex. 13 (June 2007 letter); NOL Ex. 14
6 (October 2007 letter).) Plaintiffs' argument that
7 Defendant is estopped from relying on the one-year limit
8 is therefore unpersuasive.

9 10 **3. February 2007**

11 Plaintiffs also suggest the February 2007 check
12 prevents the termination of the tolling of the one-year
13 period in December 2006; that is, it prevents the one-
14 year period from ending in December 2007. (Opp'n 5.) As
15 explained by California courts, the one-year period is
16 tolled to prevent stale claims while allowing the insured
17 to obtain information from the insurer about how it will
18 handle the claim. Singh, 63 Cal. App. at 142;
19 Prudential-LMI, 51 Cal. 3d at 691-92.

20
21 Here the amount of the February 2007 check,
22 \$1,828.45, was based on the November 2006 inspection. A
23 check for this amount was issued in December 2006 and
24 only re-issued in February 2007 at the request of Maria
25 Gurrola. The December 2006 and February 2007 checks are
26 issued under the same policy number, claim number, and
27 subject line. (NOL Ex. 10; Reply 2 n.3; Bobbs Supp'l
28

Decl. Ex. 16.) The February 2007 check was endorsed and Bank of America processed it on February 27, 2007.

The policy behind tolling the one-year period is not served by allowing the February 2007 check to prevent the one-year period from beginning in December 2006 and ending in December 2007. Tolling can be appropriate where a defendant's actions "project the expectation that plaintiffs should hold their suit in abeyance." Singh, 63 Cal. App. at 142 (declining to permit plaintiffs' request for reconsideration to toll the one-year period). Plaintiffs have cited no evidence to suggest that they had a reasonable expectation that Defendant continued to process their claim. See id. Plaintiffs have not produced any letter accompanying the February 2007 check. The February 2007 check on its own did not create any expectation that Defendant's position had changed. It was simply a duplicate of the December 2006 check, re-issued to accommodate Maria Gurrola's request regarding the names of the payees. (Reply 2 n.3; Bobbs Supp'l Decl. Ex. 16.);⁷ see Singh, 63 Cal. App. at 142. Under

⁷Plaintiffs' argument that a suit filed on March 7, 2008 is timely also is defeated by the endorsement and cashing of the check no later than February 28, 2007, the date of Bank of America's processing stamp on the back of the check. (NOL Ex. 10.)

Cashing a check enclosed with a letter stating that the "bottom line" was that the insurer considered the claim fully paid was arguably an accord and satisfaction. Angle v. U.S. Fid. and Guar. Co., 201 Cal. App. 758, 764 (continued...)

1 these circumstances, the Court finds that the one-year
2 period began in December 2006 and ended in December 2007.

3 4 **4. Request for Reconsideration**

5 Alternatively, Plaintiffs argue that the parties'
6 correspondence in the spring of 2007 continued to toll
7 commencement of the one-year period. In January 2007, in
8 a letter not cited to the Court, Plaintiff's public
9 insurance adjustor apparently asked Defendant to
10 reconsider its payment on the claim. Defendant responded
11 to this letter in April 2007 by reiterating its position
12 that no further payment would be forthcoming. (NOL Ex.
13 12.)

14
15 Plaintiffs' request for reconsideration does not toll
16 the one-year period. See Singh, 63 Cal. App. at 142.
17 "Once a claim has been made, the carrier has pursued its
18 investigation, and the claim has been denied, the
19 policies behind equitable tolling have been fulfilled."

20
21

 ⁷(...continued)
22 (1962) (discussing in the context of a claim on a fire
23 insurance policy the rule that acceptance of a check by a
24 creditor from a debtor for an amount less than that
25 claimed by the creditor is an accord and satisfaction
where the check is given with "an explicit statement . .
. that it is offered as full payment.").

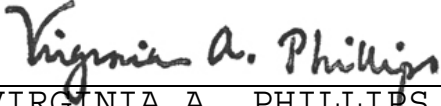
26 Even if Defendant were still processing the claim
27 after December 2006, as Plaintiffs argue, the last
conceivable date to which the one-year period could be
28 tolled was February 27, 2007. The last date on which a
filing could have been timely was therefore February 27,
2008. Plaintiffs did not file suit until March 8, 2008.

1 Id. at 142. Granting Plaintiffs "a new period of
2 equitable tolling based merely on a *request* for
3 reconsideration would be anomalous" because it would
4 allow claimants to "extend the one-year statute at will
5 with successive periods of tolling." Id. at 145.

6
7 **IV. CONCLUSION**

8 For the reasons above, the Court finds the suit
9 untimely and GRANTS Defendant's Motion.

10
11 Dated: October 6, 2008

12 
13 VIRGINIA A. PHILLIPS
14 United States District Judge
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